

# Michigan Foreclosure Process: An Overview

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**Presented to the House  
Banking and Financial  
Services Committee**



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**Michigan Poverty Law Program** is the statewide back-up center for legal services programs. The Michigan Poverty Law Program (MPLP) is a cooperative effort of Legal Services of South Central Michigan and the University of Michigan Law School.

MPLP advocates on behalf of the state's low-income population on issues in the areas of low-income housing, family law, consumer protections, and foreclosure prevention.



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**Michigan Foreclosure Prevention Project** is a project of the Michigan Poverty Law Program. The Michigan Foreclosure Prevention Project is a collaborative statewide project involving 7 major legal services programs. The goal of the Project is to provide comprehensive and coordinated foreclosure prevention advocacy throughout the state by 1) providing direct legal representation to homeowners facing foreclosure, 2) providing support to housing counseling organizations, 3) coordinating policy advocacy on a statewide basis, and 4) providing training and technical support.



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## Understanding the Foreclosure Process in Michigan

Two methods of foreclosing on a mortgage loan:

| By Going to Court

OR

| By Scheduling a Sheriff Sale (by  
advertisement in the local newspaper)



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## Foreclosure by Advertisement

- | Non-judicial foreclosure process
- | Mortgage must contain "Power of Sale" Clause that permits foreclosure by advertisement
- | Notice is by publication in a newspaper



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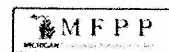
## New Foreclosure Law

- | Began July 5, 2009
- | Applies to the Foreclosure by Advertisement
- | Intent – to bring all parties to the table
- | Requires a mandatory 90-day pre-foreclosure process to avoid foreclosure.
- | Sunsets July 4, 2011



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## Applicability:

### Applies to:

- | principal residence
  
- | exempt from taxes (homestead exemption)



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## Requirements for Mortgage Holder or Servicer

- Cannot begin to foreclose by advertisement before participating in a 90-day pre-foreclosure workout process
  
- Send written notice to borrower



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## Contents of Written Notice (section 3205a(1):

- I. Why the mortgage loan is in default, the amount due and owing under the mortgage loan.
- II. The names, addresses, and telephone numbers of the mortgage holder, servicer or agent designated by mortgage holder or servicer.



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## Contents of Written Notice:

- III. The person designated as the person to contact and the person who has the authority to make agreements to modify the loan or other loss mitigation alternatives.
- IV. A list of housing counselors approved by the United States Department of Housing and Urban Development (HUD) or the Michigan State Housing Development Authority (MSHDA).
- V. Notice that within 14 days after the written notice is mailed, the borrower may request a meeting with the designated agent to attempt to work out a loan modification to avoid foreclosure and the borrower may also request a housing counselor to attend the meeting.



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- VI. Notice that if the borrower requests the meeting, foreclosure proceedings will not begin until 90 days after the date the notice is mailed to the borrower.
- VII. Notice that if the borrower and the designated agent agree to modify the loan, and the borrower complies with the terms of the loan, the mortgage will not be foreclosed.
- VIII. Notice that if the borrower and the designated agent do not agree to modify the loan but it is determined that the borrower is eligible for a loan modification based on the criteria set out in the statute and foreclosure by advertisement is not allowed under section 3205c(7), the mortgage holder or servicer cannot foreclose by advertisement and will have to foreclose by going to court.
- IX. Notice that the borrower has a right to contact an attorney. The telephone numbers of the state bar of Michigan's lawyer referral service and a local legal office must be listed.



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| Regular first class mail

| Certified Mail

| Published in the Newspaper



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## Requirements for Borrowers

Within 14 days after the written notice is  
Mailed borrower must:

- contact housing counselor
- contact designated agent



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## Role of Housing Counselors

Within 10 days after contact with borrower,  
housing counselor must contact designated  
agent in writing notify designated agent of  
borrower's request.

Issue – opt-in time period? 14 days/24 days?



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The meeting is with the designated agent, borrower and housing counselor (at borrower's request) to work out a modification of the mortgage loan.



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The designated agent is someone who has the authority to make agreements to modify the loan or other loss mitigation alternatives.

Who are the designated agents?



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## Designated Agents – Who are they?

- Trott & Trott
- Orlans
- Potestivo
- Schneiderman & Sherman



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What happens if the lender does not comply with the new law?

What happens if the borrower and the lender cannot agree on a loss mitigation alternative (such as a loan modification)?

♦ Lender must foreclose by going to court



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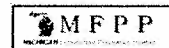


What happens if the process does not result  
in a loan modification agreement?



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## Loan Modification Program

Targets a debt-to-income ratio of 38%

Debt includes:

- mortgage principal and interest
- property taxes
- insurance
- homeowner's fees



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To reach the 38% target, the loan modification program may include 1 or more of the following features:

- Reduction of interest rate (subject to a floor of 3%), for a fixed term of at least 5 years.
- Extension of the loan term up to 40 years from the date of the loan modification.
- Deferral of some portion of the unpaid principal balance up to 20%.
- Reduction or elimination of late fees.



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### Other Loan Modification Programs Used:

If the mortgage loan is sold to a governmental entity (Ginnie Mae) or government-sponsored enterprise (Fannie Mae, Freddie Mac), then use the modification guidelines used by those entities.



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-- Copy of calculations

-- Copy of loan modification guidelines

Another area as to compliance issues



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A mortgage holder or servicer can foreclose by advertisement when the borrower is eligible for a modification, if

1) the designated agent acted in good faith

2) the borrower did not execute and return the modification agreement



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Another area as to compliance:

What happens after 90 days?



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## **Michigan's New Foreclosure Law Forecasting the Future**

- ◆ Sunsets – July 4, 2011
- ◆ Need to have the pre-foreclosure process continue
- ◆ Need to work on compliance issues



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# QUESTIONS?



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## Resources

- | Michigan Foreclosure Prevention Project  
<http://miforeclosure.mplp.org/>
- | Michigan Foreclosure Task Force  
<http://www.cedam.info/foreclosure.htm>
- | Michigan State Housing Development  
Authority (MSHDA) – Save the Dream –  
finding a housing counselor in your area  
[http://www.mshda.info/counseling\\_search/](http://www.mshda.info/counseling_search/)



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